

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hitoshi OTANI et al.

Title: DEVICE AND METHOD OF MEASURING DATA FOR
CALIBRATION, PROGRAM FOR MEASURING DATA FOR
CALIBRATION, PROGRAM RECORDING MEDIUM
READABLE WITH COMPUTER, AND IMAGE DATA
PROCESSING DEVICE

Appl. No.: 10/612,404

Filing Date: 07/03/2003

Patent No.: 7,479,982

Grant Date: 01/20/2009

Examiner: Brian P. YENKE

Art Unit: 2622

Confirmation Number: 3584

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 01/20/2009 as U.S. Patent No. 7,479,982.

The Patent Office determined that the patent was entitled to 922 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1496 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1600 days

(b) Total Applicant delay: 104 days

Final PTA Determination: 1496 days

Applicants therefore respectfully request that the patent be accorded 1496 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date March 10, 2009

By 

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Patent Term Adjustment Calculation System

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Docket Number: 035924-0109

Application Number: 10/612404

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	07/03/2003	0		
Edit Delete	Notice to File Missing Parts	09/29/2003	88		
Edit Delete	Response to Notice to File Missing Parts	11/19/2003	139		
	14 month From Application date	09/03/2004	428		
	3 Year Period Starts	07/03/2006	1,096		
Edit Delete	Restriction Requirement	05/15/2007	1,412	(984)	
Edit Delete	Restriction Requirement Response Received at PTO	06/14/2007	1,442		
Edit Delete	Restriction Requirement	08/27/2007	1,516		
Edit Delete	Restriction Requirement Response Received at PTO	09/27/2007	1,547		
Edit Delete	Non-Final Office Action	01/08/2008	1,650		
	Non-Final Office Action + 3 months	04/08/2008	1,741		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/09/2008	1,803		62
Edit Delete	Notice of Allowance	09/19/2008	1,905		
Edit Delete	Issue Fee Paid	12/10/2008	1,987		
Edit Delete	Post-Allowance Document Received at PTO	12/10/2008	1,987		
Edit Delete	Patent Grant Date	01/20/2009	2,028	(932) 1600	42
			Totals:	1,600	104
			PTA:	1,496	

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IP: 10.14.44.165

Foley & Lardner LLP